the collective virtue and public spirit of the individual citizens of our republic are the source, and the only source, of all our national power; that the functions of government are limited to devising the ways and means by which each individual citizen can most conveniently bear his share of the public burden; that taxation, and not loans, is the proper way of meeting an extraordinary expenditure which taxes the whole energies of the people, loans being advisable only when the emergency is not sufficient to necessitate the expensive machinery of taxation. When these principles are acted upon, our government will be a commonwealth in deed, as in name, and our financial system, from being the most complex, will become the most simple among nations.

ART. V. — 1. *Mémoire sur l'Origine et l'Organisation des Committés Conciliateurs en Dannemarc.* Par A. B. ROTHE. Copenhague. 1803. 16mo. pp. 126.

2. *Beyträge zur Kenntniss der Vergleichs-Einrichtungen in Dänemark.* Von A. B. ROTHE. Copenhagen. 1804. 16mo. pp. 118.

AT the close of the last century the administration of justice on the continent of Europe was in a very wretched state. At no time can the praise bestowed on the theoretical simplicity of the civil law be truly extended to the practice of the courts; and at this period the forms of procedure were to the full as verbose and cumbersome, as provocative of delay and expense, as those in an English chancery suit, while the legal profession generally were accused, and it would seem justly, of chicanery, and of eagerness rather to foment litigation than to promote the real interests of their clients. To remedy these growing evils several governments established Courts of Conciliation for the amicable settlement of disputes. These courts differed considerably in their organization, and met with very different success.

In most countries the experiment has entirely failed and

been abandoned. Such has been the case in the Netherlands, in Holland, and substantially at Geneva. In Denmark, on the other hand, these courts have continued down to the present time, and are said still to fulfil their intended purpose; in France too they still exist, but chiefly as a mere form, of little or no use.

Attempts have been made to introduce similar tribunals into England, notably by Lord Brougham in 1830, and also into this country, as by the commissioners who prepared the New York code. None of these attempts have, we believe, been successful.

We propose to give a short account of the organization and procedure of the Courts of Conciliation in the countries, Denmark and France, where they are still to be found, to note the measure of success which has attended them, to trace the causes to which success may be due, and to consider whether the same causes exist to lead to the same result among ourselves.

The Courts of Conciliation were established in Denmark by a royal decree of July, 1795. There is one in the capital, and one in each of the chief towns, while the whole of the kingdom outside the towns is divided into districts, each with its separate court. This system of judicature is, however, confined to the kingdom of Denmark proper, comprising Jutland and the islands; it was never extended over the rich duchies of Holstein and Schleswig.

In Copenhagen the court consists of three members, — a president, chosen from among the assessors of the city court, one of the city magistrates, and one of the thirty-two representatives of the city. The president holds his office for four years, and may be reappointed; but the two other members are changed weekly in regular rotation. In the other towns the magistrates nominate four or six candidates, two of whom are elected by the citizens. These two compose the court, and remain in office three years. In the country districts the duty of holding these courts devolves upon the grand bailiffs, or those counts and barons who have the like authority; but the districts are so arranged that no place shall be more than twelve miles from the seat of a court; and if any bailiwick comprises more than one district, the bailiff appoints as deputies two worthy

citizens, who hold court in his stead in the districts remote from his own residence.

Both in town and country, service on these courts is compulsory; and no barrister, attorney, or judge of the ordinary court is eligible to them. Each court has a clerk, a seal, and a record; but in some of the smallest country districts the presiding member acts as clerk. A member interested in a case is not allowed to sit, neither is he if related to one of the parties, unless the other party waives the objection.

In Copenhagen the court is constantly in session; elsewhere the courts usually meet once a week. They always sit with closed doors.

The territorial limits of each court's jurisdiction are prescribed; and all persons within them, even the nobility, the military, and the clergy, who have special tribunals of their own and are not amenable to the ordinary law courts, are yet subject to the Courts of Conciliation. These courts have jurisdiction over all questions which might form the subject of a suit at law, with the following exceptions:—1. Criminal cases; 2. Suits brought by any department of the royal government; 3. Matters relative to bills of exchange; 4. Actions for libel against public officers; 5. Matrimonial causes. Under this last head it should be observed, however, that, though the court cannot decree a divorce or separation, even with the consent of the parties, it can compel the attendance of husband and wife, and attempt to reconcile them; and, failing this, can arrange terms of separation, which it reports to the court authorized to act in such cases.

The proceedings before the Courts of Conciliation begin with a complaint containing a brief statement of the plaintiff's claim and of the name and residence of both parties. This complaint, which may be oral, but is generally written and may be accompanied by such papers as bear on the case, is entered, on its reception, in the record. Thereupon summons to the plaintiff and defendant are issued by the court, and served by its officers, who receive a trifling fee for each person summoned. These fees are paid by the plaintiff, and repaid to him by the defendant, if the award of the court so decrees and is concurred in. In the towns, parties are obliged to appear the day after sum-

mons; in the country, on the fourth day. An appearance in person is required, unless the party has one of the legal excuses: these are absence, sickness, the performance of public duties, and "private business which cannot be deferred or which will be prejudiced by delay." When any one is prevented by a legal excuse from appearing in person, he must send a proxy, with full power to act in his name. All barristers, attorneys, and their clerks, are excluded from appearing before the Courts of Conciliation, either as proxies or in any other representative or advisory capacity.

If the plaintiff fail to appear when summoned, he is nonsuited. If the defendant fail to appear, the court certifies the fact on the original complaint, which is returned to the plaintiff, who can then bring the case before a court of law; and this court will order the defendant to pay the costs of the trial, the damages to which all persons *temere litigantes* are subject, the costs before the Court of Conciliation, and compensation to the plaintiff for loss of time. All these costs and damages must be paid by the defendant, even should the final decision of the cause be in his favor.

When one party appears by proxy, the Court of Conciliation has no authority to decide whether there is a legal excuse for the failure to appear in person, but the alleged excuse is entered on the record, and its sufficiency must be judged of by the law court should the case come before it; if deemed insufficient, the party in fault is mulcted in the same costs and damages as a defendant who has failed to appear altogether.

When the parties are before the court, their names and the subject-matter of dispute are entered in the record. The plaintiff then states his grievance, and the defendant replies, admitting its truth or making a counter-statement of his own.

If the dispute turns on a question of fact, which cannot be decided by the documentary evidence produced, the court grants a continuance to allow the plaintiff time to examine witnesses. This examination, which is in writing, takes place before the ordinary tribunals, the Court of Conciliation having no power to administer an oath. The defendant can cross-examine the plaintiff's witnesses, but he is not allowed to examine any witnesses of his own; if he finds it necessary to produce evi-

dence on his own behalf, he must refuse to accede to the award of the Court of Conciliation, and bring the case before a court of law. When the examination is closed, the deposition is delivered by the magistrate before whom it is taken to the plaintiff, who appears with it before the Court of Conciliation at the adjourned hearing. The court then reads these depositions in the presence of the parties, explains to them the law bearing on the case, and makes its award.

The parties can agree to this award or not. If they agree, it is put in formal shape, inserted in the record, and signed by both parties. A copy is furnished to the plaintiff, who can at once have execution on it in the same way as on the judgment of a law court of last resort, no exception or appeal being allowed to interfere with or delay it.

If execution is not levied within a year and six weeks, the suit must be renewed before the Courts of Conciliation by a process analogous to *scire facias* at the common law. This provision, however, it should be observed, is not peculiar to the case of awards by the Courts of Conciliation, but extends to the judgments of the ordinary tribunals.

If either party refuses to agree to the award of the Court of Conciliation, or if the defendant neglects to appear before it, a transfer of the cause to the courts of law takes place. In case of a refusal to agree, the court notes it on the record, and returns to the plaintiff his original complaint, with a certificate of this refusal; and the plaintiff can then proceed in the courts of law. The latter courts refuse to consider any case which has not been before the Court of Conciliation.

We have already said that these courts always sit with closed doors. This is a most important provision. No declarations or admissions of the parties are of any weight outside the court-room, or are allowed to prejudice or in any way affect subsequent proceedings. If the parties agree to an award, this is of course published by the court, and there are two other exceptions to the rule of secrecy. In the first place, all questions relative to the appearance of the parties in person or by proxy are certified to the courts of law, and a note of any actual violence or abusive language to an adversary before the court is entered on the record, and a copy furnished, if desired, to the party injured.

The Courts of Conciliation can punish by imprisonment any violence or disorder committed in their presence; all other contempts they report to the royal chancery.

In Copenhagen, there are no costs of court except fees to the officers who serve the summons; the members of the court and its attendants have salaries from government, and all contingent expenses are also paid from the public purse. In the towns and in the country districts a small fee, one third of which goes to the clerk, is paid to the court for each case settled by award. The plaintiff pays all costs, and the award determines whether the defendant shall reimburse him; and if so, whether in whole or in part. When a case is transferred to the law courts, no fee is paid to the Court of Conciliation, and no other fees are ever allowed than those just specified.

From this brief account the theory which underlies the Danish Courts of Conciliation becomes evident. It is this. Much needless litigation will be prevented, if disputants can be brought together to tell their stories to disinterested persons, in whose character and judgment they have confidence, and before whom they must govern their tongues and tempers, especially if influences adverse to conciliation are absent, if freedom and openness of speech can be secured, and if the delay interposed by the hearing be short. The Danish legislators have striven fully to carry out this theory; they bring the disputants together by forbidding litigation except under heavy penalties to any party who does not consent to meet the other in person. They have attempted to secure the disinterestedness of the arbiter, and the confidence of the suitors in him, by the rules of his nomination and appointment. They have enforced the government of tongue and temper by investing the arbiter with the authority of a judge. They have aimed to banish influences adverse to conciliation by forbidding the disputants to be represented or assisted by lawyers. They have provided for freedom and openness of speech by the secrecy of the hearing; and they have prevented delay by the summary process of the courts and by a decision upon *ex parte* evidence.

In France this theory has been carried out only under such modifications as materially change its character. Courts of Conciliation were established in France in 1790, and were rec-

ognized and have been perpetuated by the Code. They are not held by a distinct class of magistrates, as in Denmark, but by the ordinary "Juges de Paix." Their jurisdiction is much more limited than that of the Danish courts. Among the numerous classes of questions which may be brought directly before the law courts without a previous attempt at conciliation are all those to which the government or any public institution is a party, all to which a minor is party, all calling for despatch, or relating to commerce, (a most extensive exception,) all disputes about the payment of rents or annuities, all claims in the nature of set-off, all matrimonial suits, and all causes to which more than two persons are parties.

A party who fails to appear is fined ten francs, which he must pay before he is allowed to appear in the law courts; but this small fine seems to be the only penalty upon a defendant for not obeying a summons before the Court of Conciliation. Either party may appear by proxy, and the proxy may be a barrister or attorney, — a very important difference between the French and Danish practice. Another marked distinction is, that in France the judge may sit with closed or with open doors, at his discretion; nor does it seem to be settled how far the judge can interrogate the parties, and place their answers and statements on the public record.

Looking now at the results of these Courts of Conciliation in Denmark and France, we find the Danish writers speaking with great pride and satisfaction of their success. In the half-dozen years after their establishment, the average annual number of awards made by them and accepted by the parties was between 30,000 and 35,000. The number of civil cases tried before the law courts during the three years preceding the organization of these Courts of Conciliation was 25,521; during the three years immediately succeeding, the number was 9,653; showing a decrease of 15,868.

From an official report for 1823, it appears that in that year 31,000 cases were brought before the Danish Courts of Conciliation; 21,000 were there concluded; about 600 of the remaining 10,000 were abandoned; and of the rest, 9,426 in number, only 2,355 were decided by the law courts, the others remaining undetermined.

In France the system seems to have been much less successful. M. J. A. Rogron, in his *Codes Français Expliqués*, says that "the attempt at conciliation before justices of the peace does much good in the country, but is of almost no value in the large towns, especially in Paris, where the justices, having in general only a slight acquaintance with the persons appearing before them, can exercise but little influence." Lord Brougham, though an earnest advocate for the introduction of a similar system into England, is still more general and emphatic in his language. "In France," he says, "the experiment has signally failed"; — and he quotes M. Levasseur to the effect that instances in which parties settle their disputes before the Court of Conciliation are exceedingly rare.

The success of these courts in France has been at least equivocal. On the other hand, they certainly seem in Denmark to have achieved valuable results. The reason, we think, is not far to seek.

Denmark is one of the smallest and most sparsely populated of the kingdoms of Europe; it is also one of the poorest. The great majority of the people live on farms or in small villages, and are engaged in agriculture. Except Copenhagen, no town has over twelve thousand inhabitants, and only two have over eight thousand. It was only in the beginning of the present century that the peasantry were freed from slavery. They still labor under many of the restrictions of feudal times; and though a brave, thrifty, industrious people, they are, except in the capital, decidedly less affected than any other nation of Western Europe by the improvements of modern civilization. The foreign commerce is not extensive, and interior communication is hampered by inland dues and execrable roads.

From the character and occupation of the people, and from the difficulty of intercourse between the different parts of the country, it naturally follows that such quarrels as spring up are generally among neighbors, and that the parties to a dispute reside near each other, and not far from the Court of Conciliation, whose jurisdiction, as we have seen, cannot extend over twelve miles in each direction. Indeed, the great probability that the litigants will be such near neighbors as to come within the same jurisdiction, is shown by the fact that the ele-

mentary treatises on the organization of these Danish courts make no mention of the course to be pursued when the plaintiff and defendant reside in different districts; and this omission can hardly be explained except on the supposition that such cases occur but rarely in practice.

Such near neighborhood renders possible the appearance in person of the litigants, and this is in our view the most important feature in the system of these Courts of Conciliation; for when once the parties can send a proxy, the whole proceeding is sure to degenerate into an idle form. By compelling the plaintiff and defendant to meet face to face and talk over their grievances, great good may often be accomplished. Now in our country, with its far-reaching traffic, litigation ceases to be confined to narrow bounds; the plaintiff and defendant often live hundreds of miles apart; to bring them together for a proceeding which, at the option of either, might be treated as an entire nullity, would be attended with great inconvenience and hardship; and yet to allow them to appear by proxy would destroy, as we have said, one of the main features, if not the most important one, of the whole system.

Again, from the character and occupations of the Danish people, together with their primitive mode of life, it must result that their disputes are of very simple nature, readily to be explained by the parties, and readily to be understood by the court. Disputes arising among such a rude peasantry cannot often be of much detail or complication. They must be as easy of settlement as the quarrels of servants or children. How different are the questions which come before the courts in this country! Springing as they often do out of the most involved transactions in a highly civilized state of society, they present a variety of incident and a multiplicity of detail, to unravel which demands patient and skilful examination.

A great part, indeed, of the duties of a lawyer, and a task often requiring of him both toil and ability, is to extract the facts from the confused stories of his clients, to ascertain the true relations of these facts, and to state them clearly. For a judge to determine the rights of contending parties who should rush before him in the first heat and blindness of a quarrel, without having their ideas shaped and arranged by a legal ad-

viser, would, in any complicated case, be either entirely impossible, or possible only after long delay and tedious sifting of evidence and statement.

Another reason why these courts have met with success in Denmark seems to be, that the constitution of the ordinary law courts was essentially defective. We have mentioned incidentally that, of the 9,426 cases sent from the Courts of Conciliation to the law courts in a single year, only 2,355 were decided, leaving 7,071 undetermined. It is hardly matter for surprise that people should rest content with the award of a Court of Conciliation, even if unsatisfactory, rather than submit to the long delay of justice which this fact discloses.

The reader, too, will not have failed to notice that the nobility, the clergy, and the army have courts of their own, and are not amenable to the ordinary tribunals; so that a Court of Conciliation is the only place where a peasant can have even a hearing before a possibly impartial judge against any member of the privileged classes.

And this brings us to the chief cause of the success attending these courts in Denmark, which is undoubtedly to be found in the general state of society, in that distinction between classes, and those remains of the feudal system, which exist to a greater extent in Denmark than in any other nation of Western Europe. The grand bailiff who holds the court in the country, or his deputy, who is often the clergyman of the parish, however void of compulsion his awards may be in theory, is yet invested with a temporal or spiritual power which carries his advice with the weight of a command to his tenants or parishioners. The value of these courts lies not in their organization, but in the personal character and influence of the judges. To give the institution its effect, the suitors must look up to the opinion and advice of the judge as only an ignorant and dependent people can look up, with a readiness to yield their opinions and wishes to one whom they personally revere as higher than themselves. Few would think it desirable, none probably possible, that such a condition of society as this should exist even in the most rural districts of the Northern States. The least elevated and educated Yankee holds his opinions on matters affecting his own purse and person too tenaciously, and with too

much independence, to be ready to surrender them at the advice of any one, even though he be a justice of the peace or the parish minister.

The following extract from an article published in the Law Magazine of January, 1831, in review of Lord Brougham's speech on Local Courts, does not entirely coincide with our view, but contains so much sound sense that we quote it at some length.

"The notion [of Courts of Conciliation] originated in those tempting exhibitions of philanthropy which country life occasionally presents. A landlord like Fielding's Allworthy, or a clergyman like Goldsmith's curate, residing constantly amongst his tenantry or parishioners, familiar with their habits and constantly ministering to their wants, acquires a sort of patriarchal authority; and his interposition as a conciliator derives an almost irresistible weight, as well from the general confidence in his integrity as from his having the means of punishment and reward in his hands. Such characters appear to have been uppermost in the minds of the French at the first conception of the plan, and a more preposterous one has never been conceived. They might as well have ordered back Astræa by vote, or fixed a day for the Millennium to begin, as one of our rising legislators would fix a day for a fast. A man hired to play at philanthropy is, *ipso facto*, disqualified for the gratuitous sacrifice; the unbought grace of it is gone, —

'At sight of legal ties,
Spreads its light wings, and in a moment flies.'

We feel no gratitude to a salaried conciliator, and he, on the other hand, does not feel hurt at the rejection of his offices. . . . . There is nothing at all surprising in the statement that two thirds of the cases referred to the Denmark conciliators went no further; the proportion, indeed, is much smaller than we should have anticipated, whilst there is something quite ludicrous in the argument that these two thirds would probably in this country have gone 'to a needless and dilatory and most expensive trial.' The larger part, we firmly believe, would have been settled by our courts of requests; and the rest by the first attorney, or, at any rate, the first counsel, who should advise upon them. But the whole fallacy may be still more summarily disposed of; — of those who enter a court of justice, an immense majority have made up their minds to litigation; of those who go to a conciliator, the greater number as certainly have not."

We have given the reasons which lead us to doubt the ad-

vantage of introducing Courts of Conciliation generally in this country; yet there is one part of the United States where we think they might be established with success. We mean in those States lately in rebellion, and especially for causes to which the Freedmen are parties. It is with special reference to their probable utility in such cases, and to the important aid which they might afford in the reorganization of society at the South on its new foundation of freedom, that we have thought fit at this time to call attention to their working and methods. The situation of the recently enfranchised slaves presents many of the features which have made these courts successful among the peasantry of Denmark. They are a poor people, an agricultural people; their dealings are confined to their own neighborhood; their quarrels are generally about simple matters; they have just been freed from slavery, and have many of its trammels still hanging about them. Though an irascible, they are a very placable people, and when they do respect one of the lately dominant race, they will submit to his opinion and advice with a readiness which exceeds the docility of any European peasantry. There is great danger that, in their disputes, they will fall easy victims to pettifoggers, and the more need that they should be compelled to hear good advice. Indeed, it would be hard to find a combination of circumstances more favorable to the usefulness of Courts of Conciliation. It would be a difficult task to choose impartial and discreet persons to sit on them, but, though difficult, not impossible, and we would gladly see the experiment tried.